

In the Matter of)
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Petition of the Verizon Telephone Companies)
For Forbearance under 47 U.S.C. § 160 (c) from) WC Docket No. 04-
440
Title II and Computer Inquiry Rules with)
Respect to their Broadband Services)

The Office of Advocacy of the U. S. Small Business Administration (“Advocacy”) submits these Reply Comments to the Federal Communications Commission (“FCC” or “Commission”) regarding the Petition for Forbearance (“Verizon’s Petition”) filed by Verizon Telephone Companies (“Verizon”) in the above-captioned proceeding.¹ The FCC issued a public notice² seeking comment on the Petition and whether it satisfies the three criteria for forbearance laid out by Congress in Section 10 of the Telecommunications Act of 1996.

¹ See *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Dkt. No. 04-440 (filed Dec. 20, 2004).

² See Public Notice, *Comments Invited on Petition for Forbearance Filed by the Verizon Telephone Companies with Respect to their Broadband Services*, WC Dkt. No. 04-440, DA 04-4049 (rel. Dec. 23, 2004) (Public Notice).

FCC to do an economic impact analysis to determine the economic impact of forbearance on small entities. Advocacy urges the FCC to consider the comments from small Internet Service Providers (“ISPs”) when assessing the impact upon small businesses.

1. Advocacy Background.

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (“RFA”) requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.³

Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.⁴ To this end, the RFA requires agencies to analyze the economic impact of draft regulations when there is likely to be a significant economic impact on a substantial number of small entities, and to consider regulatory alternatives that will achieve the agency’s goal while minimizing the burden on small entities.⁵

³ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

⁴ Pub. L. 96-354, FINDINGS AND PURPOSES, SEC. 2 (a)(4)-(5), 126 CONG. REC. S299 (1980).

⁵ See generally, Office of Advocacy, U.S. Small Business Administration, *A Guide for Federal*

On August 13, 2002, President George W. Bush signed Executive Order 13272 requiring federal agencies to implement policies protecting small entities when writing new rules and regulations.⁶ This Executive Order highlights the President's goal of giving "small business owners a voice in the complex and confusing federal regulatory process"⁷ by directing agencies to work closely with the Office of Advocacy and properly consider the impact of their regulations on small entities. In addition, Executive Order 13272 authorizes Advocacy to provide comment on draft rules to the agency that has proposed the rule, as well as to the Office of Information and Regulatory Affairs of the Office of Management and Budget.⁸ Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁹

2. The FCC Should Consider Small Business Impacts as Part of the Public Interest Criteria in Section 10 Petitions.

On December 20, 2004, Verizon filed a petition under Section 10 of the Telecommunications Act of 1996 asking the FCC to forbear from applying Title II

Agencies: How to Comply with the Regulatory Flexibility Act (2003), available at <http://www.sba.gov/advo/laws/rfaguide.pdf>.

⁶ Exec. Order. No. 13272 at § 1, 67 Fed. Reg. 53,461 (2002).

⁷ White House Home Page, *President Bush's Small Business Agenda*, (announced March 19, 2002) (last viewed February 2, 2004) <<http://www.whitehouse.gov/infocus/smallbusiness/regulatory.html>>.

⁸ E.O. 13272, at § 2(c).

⁹ *Id.* at § 3(c).

regulations and the *Computer Inquiry* rules to any broadband services offered by Verizon.¹⁰ Section 10 allows the Commission to forbear from applying any regulation to a telecommunications carrier or class of carriers if the FCC determines that: (1) enforcement of the regulation is not necessary to ensure that the charges and practices are just and reasonable and are not unreasonably discriminatory; (2) enforcement is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest.¹¹

Advocacy believes the FCC should consider the impact on small businesses when considering Verizon's petition. In the Regulatory Flexibility Act ("RFA"), Congress made several findings that consideration of the impact of agency decisions on small businesses is in the public interest.¹² Two commenters have asked the FCC to consider the impact on small businesses and directly refer to Congress's desire for agencies to do so as made evident in the RFA.¹³ Advocacy encourages the FCC to conduct an economic impact analysis on Verizon's Petition. In this analysis, the Commission should: (1) identify the small entities being affected, (2) assess the regulatory impact on the small entities, and (3) consider alternatives that

¹⁰ Public Notice, *supra* note 2.

¹¹ 47 U.S.C. § 160(a).

¹² *See generally*, Pub. L. 96-354, FINDINGS AND PURPOSES, SEC. 2 (a)(4)-(5), 126 CONG. REC. S299 (1980).

¹³ Comments of the Washington Bureau of ISP Advocacy to the *Petition of the Verizon Telephone Companies for Forbearance* in WC Dkt. No. 04-440 at 31 (Feb. 8, 2005) (WBIA Comments); Comments of the Federation of Internet Solution Providers of the Americas to the *Petition of the Verizon Telephone Companies for Forbearance* in WC Dkt. No. 04-440 at 55-58 (Feb. 8, 2005) (FISPA Comments).

would minimize the impact. A well-done analysis will assist the FCC in answering whether or not a Section 10 petition is in the public interest.

Advocacy encourages the FCC to reach out to small entities, especially small ISPs, to determine the impact on them from Verizon's Petition. The FCC can draw a significant amount of information from the initial comments from small ISPs, including the numbers of small ISPs affected and some general information on how they are affected. For example, according to commenters there are 2,500 ISPs in the nation¹⁴ and most of these fall under the SBA's definition of small business.¹⁵

This information should be a starting point in the Commission's analysis, and Advocacy urges the FCC to solicit more impact information from small businesses. Likewise, Advocacy encourages small businesses to collect impact information and submit it to the Commission.

5. Conclusion.

Advocacy urges the FCC to analyze the impact on small ISPs as part of the public interest criteria Congress provided in Section 10 when considering Verizon's Petition for Forbearance. Advocacy urges the FCC to consider the comments from small entities and conduct further outreach to garner more information on the regulatory impact. The Office of Advocacy is available to assist the Commission in its outreach to small business or in its consideration of the impact upon them. For

¹⁴ Comments of the Internet Junction Corporation to the *Petition of the Verizon Telephone Companies for Forbearance* in WC Dkt. No. 04-440 at 2 (Feb. 8, 2005) (Internet Junction Comments); Comments of RAD-Info to the *Petition of the Verizon Telephone Companies for Forbearance* in WC Dkt. No. 04-440 at 1 (Feb. 8, 2005) (RAD-Info Comments).

¹⁵ SBA has placed the small business threshold for Internet Service Providers (NAICS Code 518111) at \$21 million per year in revenues.

additional information or assistance, please contact me or Eric Menge of my staff at
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Respectfully submitted,

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March 8, 2005

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Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs

Certificate of Service

I, Eric E. Menge, an attorney with the Office of Advocacy, U.S. Small Business Administration, certify that I have, on this March 8, 2005, caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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